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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

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**MAR 17 1998**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
)  
**JAMES A. KAY, JR.** ) WT DOCKET NO. 94-147  
)  
)  
Licensee of 152 Part 90 Stations in the )  
Los Angeles, California Area )

To: Honorable Richard L. Sippel  
Administrative Law Judge

**WIRELESS TELECOMMUNICATIONS BUREAU'S**  
**MOTION FOR RULING REGARDING ATTORNEY WITNESSES**

1. The Chief, Wireless Telecommunications Bureau, by his attorneys, now asks that the Presiding Judge rule that James A. Kay, Jr. (Kay) must either (a) waive the attorney-client privilege with respect to the subjects of contemplated testimony in this proceeding, or (b) be barred from calling his present or former counsel as witnesses in this proceeding, and from asserting advice of counsel as a defense in this proceeding. The Bureau further asks the Presiding Judge to direct Kay to file a firm election within five days after the release of the Presiding Judge's order stating whether Kay will waive the privilege.

2. In his witness list dated March 9, 1998, Kay listed three attorneys as potential witnesses in this proceeding: Dennis C. Brown, Robert Schwaninger, and Laurence J. Feinberg. Messrs. Brown and Schwaninger formerly represented Kay before this agency. Mr. Feinberg is counsel for Kay in various California proceedings. Kay describes the

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contemplated testimony of Messrs. Brown and Schwaninger as "the legal validity of Kay's response to the Commission inquiry under Section 308(b) of the Communications Act of 1934, as amended; the affidavit prepared by Brown & Schwaninger and signed by Kay in conjunction with Kay's motion to delete issues; and the management agreements between Kay and others." Kay Witness List, pp. 6-7. Each of these matters is clearly relevant to the designated issues in this proceeding. Mr. Feinberg is described as someone who "may be familiar with incidents involving Frank Barnett, Roy Jensen, Cornelia Dray, Vincent Cordaro, and Gary Van Diest." The Bureau has listed these individuals as potential witnesses in this proceeding. Kay further states that Mr. Feinberg "also may be familiar with Kay's business practices." Kay Witness List, p. 6. The Bureau believes that Mr. Feinberg may have some knowledge that is relevant to the designated issues, although the proposed scope of his testimony is not clear from Kay's description.

3. Kay clearly states with respect to the three attorney witnesses that he is not waiving the attorney-client privilege. Kay has consistently asserted the attorney-client privilege with respect to communications between himself and his attorneys. For example, when Kay was asked at his deposition why he declined to provide the information the Bureau requested in its January 31, 1994 308(b) letter, he repeatedly asserted the attorney-client privilege. Kay Dep. Tr. 353, 367-368, 409-410 (submitted as Attachment 1 to this motion).<sup>1</sup> In another instance, in the Sobel proceeding, Kay successfully invoked attorney-client privilege to prevent

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<sup>1</sup> The Bureau placed Kay and his attorneys on notice that it would object to any testimony on matters that Kay interposed objections to on the grounds of attorney-client privilege. Kay Dep. Tr. 382-383.

disclosure of a memorandum dated January 24, 1995 transmitting the motion and affidavits filed in this proceeding which are the subject of the issues added in Memorandum Opinion and Order, FCC 98M-15 (released February 2, 1998). See letter dated July 23, 1997 from Barry A. Friedman, Esq. to the Honorable John M. Frysiak (Attachment 2 to this motion), and Judge Frysiak's oral ruling at the hearing upholding the assertion of privilege (Sobel Hearing Tr. 213-214, Attachment 3 to this motion). The Bureau assumes, for purposes of this motion, that all of the proper elements of attorney-client privilege were present for Kay to assert the privilege.

4. In Welch Communications, Inc., 4 FCC Rcd 3979, 3980 (Rev. Bd. 1989), the Review Board quoted with approval the observation of the Court of Appeals in In re Sealed Case, 676 F.2d 793, 818 (D.C. Cir. 1982):

The implied waiver doctrine has been more fully developed, however, in the context of the attorney-client privilege. Any disclosure inconsistent with maintaining the confidential nature of the attorney-client relationship waives the privilege. When a party reveals part of a privileged communication in order to gain an advantage in litigation, it waives the privilege as to all other communications relating to the subject matter because 'the privilege of secret consultation is intended only as an incidental means of defense and not as an independent means of attack, and to use it in the latter character is to abandon it in the former.

Kay has consistently used the attorney-client privilege to shield discovery of his communications with his attorneys. Now, he has informed the Presiding Judge that he apparently intends to have his attorneys testify at trial. This scenario presents a substantial

danger that Kay will shield information during discovery but then offer that information at trial, when the Bureau has had no opportunity to discover or to investigate the testimony. To the extent Kay will have his lawyers testify on a matter, he must fully waive the privilege "as to all other communications relating to the subject matter."

5. The contemplated testimony from Messrs. Brown and Schwaninger would not be relevant without testimony concerning matters which would be covered under the attorney-client privilege. They did not form any opinion or recommendation in the abstract without any facts. Instead, they received factual information from Kay, and they then communicated legal advice to Kay. In order to develop a meaningful record concerning their opinion of "the legal validity of Kay's response to the Commission inquiry," it must be determined what information they were provided (or not provided) by Kay. Similarly, with respect to the misrepresentation issue added by the Presiding Judge, the opinions of counsel are irrelevant unless they were communicated to Kay. For these reasons, if Kay will be offering testimony from his attorneys, he must waive the privilege in order to allow a meaningful record to be developed.

6. Kay should be required to decide now whether he will waive the privilege and allow his attorneys to testify fully on his proposed subject matters, or whether he will assert the privilege and not have his attorneys testify. Kay cannot have it both ways. Furthermore, his question needs to be decided now in order to allow the Bureau to plan its discovery at this

stage of the proceeding.<sup>2</sup> If Kay intends to call his attorneys as witnesses, the Bureau intends to depose those attorneys on matters relating to the scope of their expected testimony, including their communications with Kay on those matters. The Bureau may also seek other discovery relating to communications between Kay and counsel. If Kay objects to those questions on the basis of attorney-client privilege, the value of the depositions of the attorneys will be minimal. Moreover, if Kay asserted the attorney-client privilege at depositions but then waived the privilege at trial so the attorneys could testify on Kay's behalf concerning their communications with Kay, the Bureau would be compelled to cross-examine the attorneys at the hearing on matters into which it had been prevented from inquiring during discovery. Kay may not use the privilege in order to thwart discovery of matters on which he will be offering evidence on at trial.

7. The law is clear. Kay may invoke the attorney-client privilege, prevent disclosure of his communications with attorneys, and not assert any defense based upon communications with his attorneys. Alternatively, he may waive the privilege, allow the Bureau to undertake discovery concerning his communications with counsel, and then offer evidence concerning those communications with counsel to the extent those communications relate to the designated issues. He may not, however, hide behind the privilege in order to thwart discovery and then offer testimony on the same matters at trial. Kay should be required to

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<sup>2</sup> The Bureau has other objections to Kay's proposed witness list. For example, the Bureau will strenuously object to any attempt by Kay to name W. Riley Hollingsworth, Terry L. Fishel, Anne Marie Wypijewski or Robert G. Andary as witnesses. Memorandum Opinion and Order, FCC 98M-32 (released March 18, 1998). The Bureau's objections, however, need not be resolved at this date because they have no impact upon the Bureau's discovery plans.

inform the Presiding Judge and the Bureau whether he will assert the privilege, or whether he will offer evidence from his attorneys and waive the privilege in order to allow full disclosure. The Bureau asks that the Presiding Judge issue an order giving Kay a short time (e.g. five days) to report to the Presiding Judge and the Bureau whether he will waive the privilege on the contemplated subjects of the testimony of his attorneys. If Kay waives the privilege, the Bureau will seek documents and depositions relating to those matters in due course. If Kay continues to assert the privilege, the Bureau asks the Presiding Judge to rule that he may not call Messrs. Brown, Schwaninger, or Feinberg as witnesses at trial, and he may not assert advice of counsel as a defense under any of the designated issues.

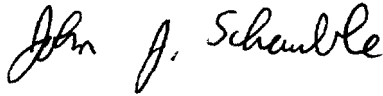
8. Accordingly, the Bureau asks the Presiding Judge to issue an order requiring Kay to report within five days whether he continues to assert the attorney-client privilege with respect to the matters described as the contemplated testimony of Messrs. Brown, Schwaninger, and Feinberg. The order should state that if Kay does not waive the privilege,

Messrs. Brown, Schwaninger, and Feinberg may not testify at the hearing on behalf of Kay,  
and Kay may not assert advice of counsel as a defense in this proceeding.

Respectfully submitted,  
Daniel B. Phythyon  
Chief, Wireless Telecommunications Bureau

A handwritten signature in dark ink, appearing to read "Gary P. Schonman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary P. Schonman  
Chief, Compliance and Litigation Branch  
Enforcement and Consumer Information Division

A handwritten signature in dark ink, appearing to read "John J. Schauble". The signature is cursive and somewhat stylized, with the first name "John" being more prominent.

William H. Knowles-Kellett  
John J. Schauble  
Attorneys, Wireless Telecommunications Bureau

Federal Communications Commission  
2025 M Street, N.W., Suite 8308  
Washington, D.C. 20554  
(202) 418-0569

March 17, 1998

**ATTACHMENT 1**



# FEDERAL COMMUNICATIONS COMMISSION

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In Re: )  
 ) Docket No:  
IN THE MATTER OF ) WT 94-147  
JAMES A. KAY )  
 )

Licensee of one hundred  
fifty two Part 90 licenses  
in the Los Angeles,  
California area

Deposition of James A. Kay

Date: January 26, 1998  
Volume: .III  
Pages: 309 through 441  
Place: Encino, California

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**HERITAGE REPORTING CORPORATION**

*Official Reporters*  
1220 L Street, NW, Suite 600  
Washington, D.C.  
(202) 628-4888

1 MR. SEIDEL: Oh, that's not on the record? The  
2 answer -- I mean, my objection, is that on the record?

3 MR. SCHAUBLE: Your objection -- is that on the  
4 record?

5 MR. SEIDEL: Would you please continue?

6 THE REPORTER: I can't look it up --

7 MR. SEIDEL: I'm sorry.

8 THE REPORTER: -- and have you talk at the same time.

9 MR. SCHAUBLE: Okay. I can re-ask the question.

10 MR. FENSKE: Let's do that.

11 MR. SCHAUBLE: Okay.

12 Q Why did you decline to provide the information  
13 requested in Paragraph 2 of the Commission's January 31,  
14 1994 letter?

15 MR. SEIDEL: Objection. The question seeks  
16 information and communications between attorney and client,  
17 and that violates the attorney-client privilege, and on that  
18 grounds, I am instructing the client not to answer. And on  
19 that ground, not grounds.

20 MR. SCHAUBLE: Okay.

21 Q Were there any reasons independent of advice  
22 of -- advice or communications with counsel that you have  
23 declined to provide that information?

24 MR. SEIDEL: You may answer that question.

25 May we have a moment to review the answer and the

1 review the April 7, 1994 letter and state where that  
2 information was provided?

3 MR. SEIDEL: I believe he means the -- I'll let him  
4 answer himself, but there's a misunderstanding. I don't  
5 think he meant that the information in response to Number 3  
6 was provided in that letter; rather, his response to Number  
7 3 is provided in that letter.

8 MR. FENSKE: That there was a response.

9 MR. SCHAUBLE: And my question is, is it correct that  
10 on April 7, 1994, you declined to provide the information  
11 that was requested in the January 31, 1994 letter?

12 THE WITNESS: I'll rephrase my answer. I believe our  
13 response to the January 31, 1994 letter is contained within  
14 the April 7, 1994 -- not the information, but our response  
15 to the request.

16 MR. SCHAUBLE: Okay.

17 THE WITNESS: Which was made under advice of counsel.

18 MR. SCHAUBLE: Okay.

19 Q And why did you decline to provide the  
20 information that was sought by the Commission in the January  
21 31, 1994 letter?

22 MR. SEIDEL: Objected to on the grounds of  
23 attorney-client privilege. Instruct him not to answer.

24 MR. SCHAUBLE: Okay.

25 MR. SEIDEL: However, if you want to rephrase, as you

1 did prior, and ask for information --

2 MR. SCHAUBLE: Were -- the next question is:

3 Q Were there any reasons other than advice of  
4 counsel that you had for declining to provide the  
5 information requested in Paragraph 3?

6 A At that time, which was early 1994, my office,  
7 at home, the homes of my employees, were completely, total  
8 disarray, as were our files, our filing system. There would  
9 be difficulty in even locating the files requested if they  
10 had not been damaged or destroyed by the earthquake, and  
11 there was no time whatsoever available for anyone to locate  
12 and to photocopy what would be an extensive and massive  
13 request.

14 (Conference between the witness and his counsel.)

15 THE WITNESS: A number of files were lost and  
16 destroyed in the earthquake. I don't even know what files  
17 were lost or destroyed. Many people worked on the cleanup  
18 and restoration at my company, and over the period of time  
19 subsequent to the earthquake, there are files that simply  
20 have never been found. We presume that they were destroyed.  
21 I don't know how much was water damage. We had stuff that  
22 was water damaged, and there was stuff that was just torn to  
23 pieces.

24 Q BY MR. SCHAUBLE: Okay. Do you -- turn to --  
25 on the January 31, 1994 letter, do you see that those

1 (Conference between the witness and his counsel.)

2 MR. SEIDEL: I'm willing to -- tell the same thing to  
3 Scott. Talk to him.

4 MR. FENSKE: Can we go off the record?

5 MR. SEIDEL: I'd like to allow my client to answer  
6 the question -- give me a complete answer. However, it will  
7 involve divulging some attorney-client communications, so I  
8 would like a stipulation that we're not waiving any  
9 attorney-client privilege either now or in the future.

10 (Conference between the witness and Mr. Fenske held  
11 outside the deposition room.)

12 MR. SCHAUBLE: I think our position is -- we would  
13 agree that to not operate as a general waiver of the  
14 privilege or waiver as to any other matters. However, I  
15 think to the extent he, you know, divulges things, I think  
16 it has to outweigh the waiver under that particular  
17 classification.

18 MR. SEIDEL: Okay. Understood.

19 (Discussion off the record.)

20 MR. KNOWLES-KELLETT: Back on the record.

21 One thing we would like to make clear is that, you  
22 know, you can claim the privilege, instruct him not to  
23 answer, but if you go at trial to present a justification  
24 that we weren't allowed to get into today, we're going to  
25 argue that you are precluded from doing it, that you can't

1 just waive --

2 MR. FENSKE: I appreciate your candor, but we can  
3 agree to disagree on that theory.

4 MR. KNOWLES-KELLETT: Okay.

5 MR. FENSKE: But I do appreciate your candor.

6 MR. KNOWLES-KELLETT: I'm putting it on the record  
7 that --

8 MR. FENSKE: That's fine. We don't disagree -- we  
9 don't agree with it, but that's academic. I think there's  
10 an alternative way of resolving it, but --

11 MR. SEIDEL: Exactly. It may turn out that we --  
12 well, we'll worry about it later. I won't even be handling  
13 that end of it.

14 MR. SCHAUBLE: Okay. I believe there was a question  
15 pending.

16 (Question read.)

17 MR. SCHAUBLE: Let me re-ask the question, then.

18 Q The question is, why didn't that language in  
19 the May 20, 1994 letter assuage your concerns about  
20 confidentiality?

21 A Based upon the prior responses of the  
22 Commission and advice from my counsel, my concerns that my  
23 confidential documents would not be released were not  
24 satisfied. I was not assured that they would not be  
25 released.

1 MR. KNOWLES-KELLETT: Yes.

2 Q BY MR. SCHAUBLE: Turn to the fifth page of  
3 the document, and specifically, the paragraph -- the  
4 Commission's request at Item 6.

5 A Yeah.

6 Q And do you see there that your counsel is  
7 invoking on your behalf the Fifth Amendment to the U.S.  
8 Constitution?

9 A I see that.

10 Q Okay. Did you authorize them to invoke the  
11 Fifth Amendment on your behalf?

12 MR. FENSKE: I'm going to object to that line of  
13 questioning based on attorney-client privilege, and I'll  
14 instruct the witness not to answer.

15 Q BY MR. SCHAUBLE: Okay. Do you have any  
16 understanding as to what, if any, sort of proceeding or  
17 process was sought to be avoided by invoking the Fifth  
18 Amendment to the United States Constitution?

19 MR. SEIDEL: Independent of any communications with  
20 counsel -- that's how he's going to answer.

21 MR. SCHAUBLE: Okay. And I take it, just so the  
22 record's clear, you are instructing your client not to  
23 answer the question to the extent it deals with matters  
24 relating to communications with counsel.

25 MR. SEIDEL: Yes. Thank you.

1 MR. FENSKE: Absolutely.

2 THE WITNESS: None that I know of. We just didn't  
3 have a clue what the Commission was trying to do.

4 MR. SCHAUBLE: Okay. I'm done with this line.

5 Mr. Knowles-Kellett is now going to resume the  
6 questioning on a different matter.

7 MR. SEIDEL: Let me just put something brief on the  
8 record.

9 Normally, in a deposition, only one attorney will  
10 handle it, but attorneys for the Bureau and Mr. Kay have  
11 informally agreed to allow -- to vary from that practice,  
12 and accordingly, we have no problem with Mr. Knowles-Kellett  
13 asking questions.

14 MR. SCHAUBLE: Thank you.

15 MR. SEIDEL: And obviously, I would expect the same  
16 courtesy.

17 MR. SCHAUBLE: We've had that agreement previously  
18 and have operated in such a manner previously.

19

20 EXAMINATION

21 BY MR. KNOWLES-KELLETT:

22 Q I want to mark that Exhibit 28. I apologize.  
23 I only have two of them, so if you could pass that back.

24 (The document referred to was marked by the court  
25 reporter as Kay Exhibit 28 for identification and is



**ATTACHMENT 2**

THOMPSON  
HINE & FLORY LLP

*Attorneys at Law*

July 23, 1997

**VIA HAND-DELIVERY**

Honorable John M. Frysiak  
Federal Communications Commission  
2000 L Street, N.W.  
Second Floor  
Washington, D.C. 20554

Re: In re Marc Sobel, WT Docket No. 97-56

Dear Judge Frysiak:

James A. Kay, Jr. ("Kay") hereby submits the following response to the Presiding Judge's Order, FCC 97M-128, released July 23, 1997.

In response to the Bureau's Second Request for Production of Documents, Kay filed a response on June 3, 1997, wherein he objected to Bureau Request Nos. 1, 2 and 5 on the basis of the attorney-client privilege.<sup>1</sup> In his July 18, 1997 Response to the Bureau's Second Motion to Compel, Kay reaffirmed the privilege in order to preserve the same should Kay subsequently obtain or discover any documents responsive to the Bureau's request. In the July 18, 1997 Response, Kay advised the Presiding Judge that there are no documents responsive to the Bureau's requests, that Kay's counsel had previously advised the Bureau of this fact, and, based on this representation, Kay's counsel requested that the Bureau withdraw its pending motion to compel. The Bureau refused the latter request and, in its July 21, 1997 Motion to Leave to Respond to Kay's Response to the Bureau's Second Motion to Compel ("Motion to Leave"), contends that Kay should explain his alleged inconsistent response.

Contrary to the implications in the Motion to Leave, there are no inconsistent responses. It is customary for a responding party to assert a privilege to a discovery request if there is a valid reason to do so. Absent the assertion of the privilege, Kay would be exposed to a claim that he waived his privilege by not initially asserting it if Kay subsequently obtained or discovered a

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<sup>1</sup> In his July 18, 1997 Response to the Bureau's Second Motion to Compel Production of Documents, Kay's counsel inadvertently stated that the attorney-client privilege applied to Bureau Request No. 3. In his June 3, 1997 Response, Kay accurately stated that there were no known documents responsive to Request No. 3.

THOMPSON  
HINE & FLORY LLP

*Attorneys at Law*

Honorable John M. Frysiak

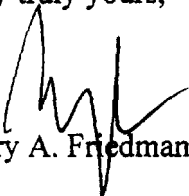
July 23, 1997

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document responsive to the Bureau's request. Again, Kay reaffirms his belief that there are no documents directly responsive to the Bureau's request.

Given the Bureau's concern with this issue and out of an abundance of caution, however, Kay has attached a copy of a document hereto that Kay does not believe is responsive to the Bureau's requests, but contains a mention of a matter raised in such requests. This document is a January 24, 1995 memorandum from Kay's prior counsel, Curt Brown, Esquire, to Kay (the "Memorandum"). A draft copy of the Motion to Enlarge, Change or Delete Issues in WT Docket No. 94-147, along with both Kay's and Sobel's draft (i.e., unsigned) affidavits, was also attached to the Memorandum. The Memorandum, to the extent the Presiding Judge deems it responsive to the Bureau's requests, is subject to the attorney-client privilege since it is clearly a confidential communication between Kay and his counsel. Consequently, it should not be produced to the Bureau. To the extent the Presiding Judge disagrees with this contention and directs Kay to produce the Memorandum to the Bureau, Kay requests the Presiding Judge to order that the contents of the Memorandum, except for the first line in the first paragraph and the first two lines in the third paragraph, be redacted before it is produced.

Very truly yours,



Barry A. Friedman

Enclosure

cc: John J. Schauble, Esquire (w/out enclosure) (via hand-delivery) ✓  
Robert J. Keller, Esquire (w/out enclosure) (via hand-delivery)

**ATTACHMENT 3**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of:	)	Docket No. WT97-56
	)	
MARC SOBEL, APPLICANT	)	
FOR CERTAIN PART 90	)	
AUTHORIZATIONS IN THE LOS	)	
ANGELES AREA AND REQUESTOR OF	)	
CERTAIN FINDERS PREFERENCES	)	
	)	
MARC SOBEL AND MARC SOBEL	)	
D/B/A AIR WAVE COMMUNICATIONS	)	
	)	
LICENSEE OF CERTAIN PART 90	)	
STATIONS IN THE LOS ANGELES	)	
AREA	)	
	)	

Courtroom 2  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Wednesday,  
July 30, 1997

The parties met, pursuant to the notice of the  
Judge, at 10:00 a.m.

BEFORE: HON. JOHN M. FRYSIK  
Administrative Law Judge

APPEARANCES:

On behalf of Petitioner:

ROBERT J. KELLER, ESQ.  
Federal Telecommunications Law  
4200 Wisconsin Avenue  
Washington, D.C. 20076-2143  
(202) 416-1670

Heritage Reporting Corporation  
(202) 628-4888

1                    P R O C E E D I N G S

2                    JUDGE FRYSIAK: Good morning all. Please be  
3 seated. We are on the record. Any preliminary matters?

4                    MR. FRIEDMAN: Your Honor, just to enter an  
5 appearance. Barry Friedman for the Intervenor, James A.  
6 Kay, Jr.

7                    JUDGE FRYSIAK: All right.

8                    MR. SCHAUBLE: Your Honor, I have one preliminary  
9 matter, more in terms of a question.

10                   JUDGE FRYSIAK: Yes.

11                   MR. SCHAUBLE: As Your Honor knows, there is a  
12 pending discovery matter with respect to Mr. Kay and a  
13 document that was submitted for which Mr. Kay claimed  
14 privileged.

15                   JUDGE FRYSIAK: Yes.

16                   MR. SCHAUBLE: I was wondering if Your Honor has  
17 entered into a ruling yet on --

18                   JUDGE FRYSIAK: Well, I have not made an expressed  
19 ruling. But I have looked at the documents, and it is my  
20 firm belief that they are privileged. The documents that  
21 were submitted to me, the attorney-client privilege does  
22 extend to it.

23                   MR. SCHAUBLE: Okay.

24                   JUDGE FRYSIAK: All right? If you want it in  
25 writing, I can do it.

1           MR. SCHAUBLE: I think just so long as it is clear  
2   that you have actually ruled that the documents are covered  
3   by that privilege.

4           JUDGE FRYSIK: I have them right here, as a  
5   matter of fact. But they are privileged.

6           MR. SCHAUBLE: Thank you, Your Honor. That was my  
7   only preliminary matter.

8           MR. KELLER: The only preliminary matter I have is  
9   I wanted to provided a copy for Your Honor. These are the  
10  color versions of the black and white pictures that are in  
11  some of our exhibits. They are marked either in the front  
12  of the large ones or on the back of the photographs.

13          JUDGE FRYSIK: Okay.

14          MR. KELLER: And I have an extra copy for --

15          MR. FRIEDMAN: You gave me one.

16          MR. KELLER: Did I already give it to you? You  
17  better give it to them, and I will get you another one.  
18  Other than that, I have nothing else, Your Honor.

19          JUDGE FRYSIK: All right. If there is nothing  
20  further, we will continue with examination of Mr. Sobel.  
21  Mr. Sobel, please take the stand.

22          Whereupon,

23                       MARC DAVID SOBEL


24          having been previously duly sworn, was recalled as  
25  a witness herein and was examined and testified as follows:

## CERTIFICATE OF SERVICE

I, John J. Schauble, an attorney in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 17th day of March, 1998, sent via hand delivery, copies of the foregoing "Wireless Telecommunications Bureau's Motion for Ruling Regarding Attorney Witnesses" to:

Barry A. Friedman, Esq.  
Thompson, Hine & Flory  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(Counsel for James A. Kay, Jr.)

Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
2000 L Street, N.W.  
Second Floor  
Washington, D.C. 20554

  
John J. Schauble